

**SETTLEMENT AGREEMENT**  
**BETWEEN**  
**MISSOURI REAL ESTATE COMMISSION**  
**AND**  
**DANIEL J. CONWAY**

Daniel J. Conway (“Conway”) and the Missouri Real Estate Commission (“MREC”) enter into this Settlement Agreement for the purpose of resolving the question of whether Conway’s license as a real estate salesperson, no. 2006037284, will be subject to discipline. Pursuant to § 536.060, RSMo (2000),<sup>1</sup> the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the MREC under § 621.110, RSMo (Supp. 2013). The MREC and Conway jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo (Supp. 2013).

Conway acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against him at the hearing; the right to present evidence on his behalf at the

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<sup>1</sup> All statutory citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against him; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the MREC at which time Conway may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the MREC.

Being aware of these rights provided to him by law, Conway knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to him.

Conway acknowledges that he has received a copy of documents that were the basis upon which the MREC determined there was cause for discipline, along with citations to law and/or regulations the MREC believes were violated. Conway stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Conway's license as a real estate salesperson, license no. 2006037284, is subject to disciplinary action by the MREC in accordance with the relevant provisions of Chapter 621, RSMo, and Chapter 339, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREC and Conway in Part II herein is based only on the agreement set out in Part I herein. Conway understands that the MREC may take further disciplinary action against him based on facts or conduct not specifically mentioned in this document that are either now known to the MREC or may be discovered.

**I.**  
**Joint Stipulation of Facts and Conclusions of Law**

Based upon the foregoing, the MREC and Conway herein jointly stipulate to the following:

1. Conway holds a Missouri real estate salesperson license, no. 2006037284. Conway's license is, and was, valid at all times relevant herein.

2. On May 23, 2013, Conway pled guilty in the Circuit Court of Jackson County, Missouri, case no. 1116-CR02726-01 ("the 2013 criminal case"), to a class D felony of driving while intoxicated ("DWI") and a class B misdemeanor of careless and imprudent driving.

3. Conway was charged with a felony DWI in the 2013 criminal case because he had two previous DWI offenses and was charged as a persistent offender under § 577.023, RSMo (Supp. 2010).

4. The charges underlying the 2013 criminal case stated in part:

Count I.

The Prosecuting Attorney of the County of Jackson, State of Missouri, upon information and belief, charges that the defendant, in violation of Section 577.010, committed the class D felony of driving while intoxicated, punishable upon conviction under Sections 558.011, 560.011, and 577.023, RSMo, in that on or about April 23, 2011, at Buckner-Tarsney Road and Woodbury, Grain Valley, in the County of Jackson, State of Missouri, the defendant operated a motor vehicle while under the influence of alcohol, and

On or about June 9, 2003, defendant was found guilty of driving while intoxicated for events occurring on November 29, 2002, in the County of Jackson, State of Missouri, and

On or about June 4, 2002, defendant was found guilty of driving while intoxicated for events occurring on September 23, 2001, in the City of Springfield, State of Missouri.

#### Count II.

The Prosecuting Attorney of the County of Jackson, State of Missouri, upon information and belief, charges that the defendant, in violation of Section 304.012, RSMo, committed the class B misdemeanor of careless and imprudent driving, punishable upon conviction under Sections 558.011 and 560.016, RSMo, in that on or about April 23, 2011, in the County of Jackson, State of Missouri, the defendant operated a motor vehicle on a public road known as Buckner-Tarsney Road and Woodbury, in the careless and imprudent manner by crossing over the center line, nearly striking another vehicle, and thereby endangered the property of another or the life and limb of any person.

5. Section 577.010, RSMo (Supp. 2010), regarding driving while intoxicated, states in pertinent part:

1. A person commits the crime of “driving while intoxicated” if he operates a motor vehicle while in an intoxicated or drugged condition.

6. Section 577.023, RSMo (Supp. 2010), regarding aggravated, chronic, persistent and prior offenders, states in pertinent part:

1. For purposes of this section, unless the context clearly indicates otherwise:

...

(5) A “persistent offender” is one of the following:

(a) A person who has pleaded guilty to or has been found guilty of two or more intoxication-related traffic offenses[.]

...

3. Any person who pleads guilty to or is found guilty of a violation of section 577.010 or 577.012 who is alleged and proved to be a persistent offender shall be guilty of a class D felony.

7. Section 304.012, RSMo, regarding careless and imprudent driving, states:

1. Every person operating a motor vehicle on the roads and highways of this state shall drive the vehicle in a careful and prudent manner and at a rate of speed so as not to endanger the property of another or the life or limb of any person and shall exercise the highest degree of care.

2. Any person who violates the provisions of this section is guilty of a class B misdemeanor, unless an accident is involved then it shall be a class A misdemeanor.

8. Section 339.100.2, RSMo (Supp. 2013), which authorizes the MREC to file a complaint with the Administrative Hearing Commission, states in part:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

...

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

...

(18) Been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of this state or any other state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed[.]

9. Section 339.040.1, RSMo (Supp. 2013), relating to licensing

requirements, provides in part:

1. Licenses shall be granted only to persons who present . . . satisfactory proof to the commission that they:

(1) Are persons of good moral character[.]

. . .

(3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

10. By pleading guilty to the felony of driving while intoxicated – persistent offender, and engaging in the conduct underlying that crime, Conway demonstrated that he lacks good moral character, which is a ground for the MREC to refuse to issue a license under § 339.040.1(1), RSMo (Supp. 2013), and, therefore, cause to discipline Conway’s license pursuant to § 339.100.2(16), RSMo (Supp. 2013).

11. By pleading guilty to the felony of driving while intoxicated – persistent offender, and engaging in the conduct underlying that offense, Conway demonstrated that he is not competent to transact the business of a real estate salesperson in such a manner as to safeguard the interest of the public, which is a ground for the MREC to refuse to issue a license under § 339.040.1(3), RSMo (Supp. 2013), and, therefore, cause to discipline Conway’s license pursuant to § 339.100.2(16), RSMo (Supp. 2013).

12. By pleading guilty to the misdemeanor of careless and imprudent driving and engaging in the conduct underlying that offense, Conway demonstrated that he lacks good moral character, which is a ground for the MREC to refuse to issue a license under § 339.040.1(1) RSMo (Supp. 2013), and, therefore, cause to discipline Conway's license pursuant to § 339.100.2(16), RSMo (Supp. 2013).

13. By pleading guilty to the misdemeanor of careless and imprudent driving and engaging in the conduct underlying that offense, Conway demonstrated that he is not competent to transact the business of a real estate salesperson in such a manner as to safeguard the interest of the public, which is a ground for the MREC to refuse to issue a license under § 339.040.1(3) RSMo (Supp. 2013), and, therefore, cause to discipline Conway's license pursuant to § 339.100.2(16), RSMo (Supp. 2013).

14. By pleading guilty to the felony of driving while intoxicated, Conway pled guilty to an offense reasonably related to the qualifications, functions or duties of a real estate salesperson and an offense involving moral turpitude. Therefore, cause exists to discipline Conway's license pursuant to § 339.100.2(18), RSMo (Supp. 2013).

15. By pleading guilty to the misdemeanor of careless and imprudent driving, Conway pled guilty to an offense reasonably related to the qualifications, functions or duties of a real estate salesperson. Therefore,



cause exists to discipline Conway's license pursuant to § 339.100.2(18), RSMo (Supp. 2013).

## II. **Joint Agreed Disciplinary Order**

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the MREC in this matter under the authority of § 536.060, RSMo, and §§ 621.045.4 and 621.110, RSMo (Supp. 2013).

1. **Conway's license is on probation.** Conway's license as a real estate salesperson is hereby placed on PROBATION for a period of FIVE YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Conway shall be entitled to practice as a real estate salesperson under Chapter 339, RSMo, as amended, provided Conway adheres to all the terms of this agreement.

2. **Terms and conditions of the disciplinary period.** The terms and conditions of the disciplinary period are as follows:

A) **Quarterly reports.** Conway shall obey and comply with all terms and conditions of probation for his criminal supervision. Conway shall prepare and submit quarterly written reports to the MREC regarding the status of and compliance with his criminal probation, parole, and/or release, as well as his compliance with the

terms and conditions of this settlement agreement. Conway is responsible for ensuring that such quarterly reports are received by the MREC on or before January 10, April 10, July 10, and October 10 during each year of the disciplinary period. Conway shall submit the first such report so that the MREC receives it on or before April 10, 2014.

B) Conway shall keep the MREC apprised at all times of his current address and telephone number at each place of residence and business. Conway shall notify the MREC in writing within ten (10) days of any change in this information.

C) Conway shall timely renew his real estate license(s), timely pay all fees required for license renewal and shall comply with all other requirements necessary to maintain his license(s) in a current and active status. During the disciplinary period, Conway shall not place his real estate license(s) on inactive status as would otherwise be allowed under 20 CSR 2250-4.050. Alternatively, without violating the terms and conditions of this Settlement Agreement, Conway may surrender his real estate license(s) by submitting a letter to the MREC and complying with 20 CSR 2250-8.155. If Conway applies for a real estate license after surrender, Conway shall be required to requalify as if an original applicant and the MREC will not be precluded from

basing its decision, wholly or partially, on the findings of fact, conclusions of law, and discipline set forth in this Settlement Agreement.

D) Conway shall meet in person with the MREC or its representative at any such time or place as required by the MREC or its designee upon notification from the MREC or its designee. Said meetings will be at the MREC's discretion and may occur periodically during the probation period.

E) Conway shall immediately submit documents showing compliance with the requirements of this Settlement Agreement to the MREC when requested by the MREC or its designee.

F) During the probationary period, Conway shall accept and comply with unannounced visits from the MREC's representative to monitor compliance with the terms and conditions of this Settlement Agreement.

G) Conway shall comply with all relevant provisions of Chapter 339, RSMo, as amended, all rules and regulations duly promulgated there under, all local, state, and federal laws. "State" as used herein includes the State of Missouri and all other states and territories of the United States. Any cause to discipline Conway's license as a real estate broker salesperson under § 339.532.2, RSMo, as

amended, that accrues during the disciplinary period shall also constitute a violation of this Settlement Agreement.

3. Upon the expiration of the disciplinary period, Conway's license shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREC determines that Conway has violated any term or condition of this Settlement Agreement, the MREC may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Conway's license.

4. No additional discipline shall be imposed by the MREC pursuant to the preceding paragraph of this Settlement Agreement without notice and opportunity for hearing before the MREC as a contested case in accordance with the provisions of Chapter 536, RSMo.

5. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by Conway of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

6. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the MREC or may be discovered.

7. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the parties agree that the MREC may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Conway agrees and stipulates that the MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

8. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

9. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

10. The parties to this Settlement Agreement understand that the MREC will maintain this Settlement Agreement as an open record of the MREC as required by Chapters 324, 339, and 610, RSMo, as amended.

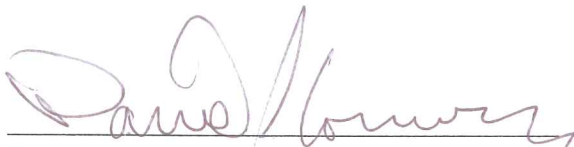
11. Conway, together with his partners, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the MREC, its respective members, employees, agents

and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo (as amended), or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.


12. Conway understands that he may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Conway's license. If Conway desires the Administrative Hearing Commission to review this Settlement Agreement, Conway may submit his request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

13. If Conway requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Conway's license. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the MREC may proceed to seek discipline against Conway as allowed by law. If Conway does not request review by the Administrative Hearing Commission, this Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREC.

LICENSEE

  
Daniel J. Conway  
Date: 3/3/14

MISSOURI REAL ESTATE  
COMMISSION

  
Janet Carder, Executive Director  
Date: March 13, 2014

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